

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

DIAMOND RESORTS CORPORATION,
a Maryland corporation,

Plaintiff,

v.

MUTUAL RELEASE CORPORATION a/k/a
417 MRC LLC, a Missouri limited liability
company; DAN CHUDY, an individual;
MATTHEW TUCKER, an individual;
JOSEPH DICKLEMAN, an individual;
THERESE BROOKE PIAZZA, an individual;
NATHANIEL TYLER, an individual;
SHEILA WOOD, an individual; CLS, INC.
d/b/a ATLAS VACATION REMEDIES and
also d/b/a PRINCIPAL TRANSFER GROUP,
a Missouri corporation; DONNELLY
SNELLEN, an individual; and JASON LEVI
HEMINGWAY, an individual,

Defendants.

Case No.: 6:18-cv-03053-MDH

**PLAINTIFF/COUNTER-DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT ON
DONNELLY SNELLEN'S FIRST AMENDED COUNTERCLAIM**

Plaintiff/Counter-Defendant, Diamond Resorts Corporation (“Diamond”), by and through undersigned counsel, and pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, files its Motion for Summary Judgment on Defendant/Counter-Plaintiff Donnelly Snellen’s (“Snellen”) First Amended Counterclaim [DE 132] (“Amended Counterclaim”) as there are no issues of material fact in dispute attendant to the sole claim asserted in the Amended Counterclaim (Abuse of Process), rendering summary judgment in favor of Diamond warranted, as a matter of law.

As discussed in the accompanying Suggestions in Support of this Motion, the Court should grant summary judgment in favor of Diamond on the Abuse of Process claim because Snellen cannot adduce any evidence that Diamond made “an illegal, improper, perverted use of process, a use neither warranted nor authorized by the process.” *Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC*, 2019 WL 3793761, at *5 (Mo. Aug. 13, 2019). Accordingly, Snellen’s claim fails as a matter of law. *See Bigfoot on the Strip, LLC v. Winchester*, 2019 WL 4144318, at * (W.D. Mo. Aug. 30, 2019) (J. Phillips) (granting summary judgment on abuse of process claim where plaintiff could not adduce evidence of improper use of process).

WHEREFORE, Diamond respectfully requests that the Court enter an Order granting summary judgment in favor of Diamond on Snellen’s Amended Counterclaim and granting such other and further relief as appropriate.

DATED: October 2, 2019

/s/ Alfred J. Bennington, Jr.
Alfred J. Bennington, Jr., Esq. (Pro Hac Vice)
Florida Bar No. 404985
Email: bbennington@shutts.com
Glennys Ortega Rubin, Esq. (Pro Hac Vice)
Florida Bar No. 556361
Email: grubin@shutts.com
SHUTTS & BOWEN LLP
300 South Orange Avenue, Suite 1600
Orlando, Florida 32801
Telephone: (407) 835-6755
Facsimile: (407) 849-7255

And

Daniel J. Barsky, Esq. (Pro Hac Vice)
Florida Bar No. 25713
Email: dbarsky@shutts.com
SHUTTS & BOWEN LLP
200 South Biscayne Boulevard, Suite 4100
Miami, Florida 33131
Telephone: 561-650-8518
Facsimile: 561-822-5527

And

Jonathan P. Hart, Esq. (Pro Hac Vice)
Florida Bar No. 55982
Email: jhart@shutts.com
SHUTTS & BOWEN LLP
525 Okeechobee Boulevard, Suite 1100
West Palm Beach, FL 33401
Telephone: (561) 835-8500
Facsimile: (561) 650-8530

And

Neal F. Perryman, #43057MO
Oliver H. Thomas, #60676MO
Michael L. Jente, #62980MO
LEWIS RICE LLC
600 Washington Avenue, Suite 2500
St. Louis, MO 63101
Telephone: (314) 444-7661
Facsimile: (314) 612-7661
nperryman@lewisrice.com
othomas@lewisrice.com
Attorneys for Plaintiff, Diamond Resorts Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of October, 2019, a true and correct copy of the foregoing has been electronically filed with the Clerk of Court using the Court's CM/ECF filing system, which will serve a copy on:

Thomas H. Hearne, Esq.

HEARNE & PIVAC

2733 East Battlefield, #301

Springfield, Missouri 65804

Telephone: (417) 883-3399

Facsimile: (844) 422-9713

Email: thhearne@hplawfirm.org

*Attorneys for Mutual Release Corporation
d/b/a 417 MRC LLC, Dan Chudy, Matthew
Tucker, Joseph Dickleman, Therese Brooke
Piazza, Nathaniel Tyler, and Sheila Wood*

M. Scott Montgomery, Esq.

Derrick A. Pearce, Esq.

THE MONTGOMERY LAW FIRM, LLC

901 E. St. Louis St., Ste. 1200

Springfield, MO 65806

Telephone: 417-887-4949

Facsimile: 417-887-8618

Email: scott@montgomerylaw.org

Email: derrick@montgomerynewcomb.com

*Attorneys for Donnelly Snellen and Jason Levi
Hemmingway*

/s/ Alfred J. Bennington, Jr.

Alfred J. Bennington, Jr., Esq.

ORLDOCS 17203810 1